

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-878

JOHNNY LINN MANN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 1, 2009

APPEAL FROM THE DREW COUNTY
CIRCUIT COURT,
[NO. CR-2006-222-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Drew County found appellant Johnny Linn Mann guilty of second-degree battery and of the failure to stop after an accident with injury, for which the trial court imposed consecutive terms of imprisonment totaling six years. For reversal, appellant argues that there is insufficient evidence to support the conviction for second-degree battery. We affirm.

On November 28, 2006, Rene Knowles, her sister Toni Shirey, and Shirey's daughter, Jodi Person, attended a function at their church. According to their testimony, the three were chatting in the parking lot at approximately 1:00 a.m. when they heard tires squealing and saw smoke rising from another parking lot at the church. Believing there had been an accident, Knowles ran to the other lot while Shirey, a volunteer firefighter, drove in her vehicle with Jodi. When they arrived at the other lot, Tina Goudy, a woman they all knew,

was standing outside a small, dark-colored pickup truck and was screaming at the driver of this truck. The driver suddenly accelerated in reverse and struck with considerable force the front, passenger side of the vehicle occupied by Shirey and Jodi.

Shirey testified that she emerged from her vehicle and confronted the driver of the small truck. She said that she had known appellant all of her life, and she identified him as the driver of the small truck. Shirey said that, after a brief exchange of unfriendly words, appellant drove away in the truck and that Goudy also departed in her vehicle. Knowles obtained the license-plate number of the truck and called the police.

After speaking briefly with the police officers, Shirey transported Jodi to the emergency room. Jodi testified that the impact of the collision hurled her forward and then backward, and she said that she sustained a fracture to her right wrist when her wrist struck the door frame during the crash. She said that her wrist swelled immediately and that the injury was so painful that she could not move her arm. As the doctor recommended, she wore a brace on her wrist for three weeks. Jodi testified that she still has trouble with her wrist. She explained that her wrist hurts and swells when she does too many cheerleading stunts and that it pops and swells when she plays softball. Jodi testified that she continues to wear the brace when necessary.

Tina Goudy testified on behalf of appellant, whom she had dated for twelve years. She recalled that she was in the church parking lot that night waiting for her sons with appellant in her Jeep Grand Cherokee. Goudy stated that she saw several vehicles in the back

of the lot that left just before a police car drove by with its sirens activated and its lights flashing. She said that a truck then drove quickly into the parking lot and parked near her Jeep. Goudy testified that a vehicle with flashing lights abruptly came to a stop behind the truck and that Shirey emerged from this vehicle and began yelling at the driver of the truck. She said that the truck then left the lot and that Shirey briefly chased it on foot. Goudy said that she did not see or hear any collision. Goudy further testified that her daughter participates in cheerleading with Jodi and that Jodi did not appear to have any difficulty performing cheerleading routines.

Justin Goudy, Goudy's son, testified that he attended high school with Jodi. He said that Jodi asked him whether his brother or appellant was in town the night of the incident driving his brother's truck, because Jodi's mother did not know which one of them was driving at the time of the accident. Justin acknowledged that Jodi wore a brace for several weeks after the collision.

Goudy's daughter, Leeza Goudy, also testified at the trial. She said that she was involved in cheerleading with Jodi and observed her wearing a brace after the accident. Leeza testified that Jodi's arm was limited by the brace but that she completed extensions and basket tosses without difficulty. She did not recall Jodi ever sitting out of practices due to complaints of pain.

Appellant moved for a directed verdict at the end of the State's case and at the close of all of the evidence. The trial court denied those motions, and the jury found appellant

guilty as charged. Appellant argues on appeal that the trial court erred by not granting his motions for a directed verdict with regard to second-degree battery.

Our law provides that a person commits battery in the second degree if the person recklessly causes serious physical injury to another person by means of a deadly weapon. Ark. Code Ann. § 5-13-202(a)(3) (Supp. 2007). “Serious physical injury” means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. Ark. Code Ann. § 5-1-101(21) (Supp. 2007).

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Springs v. State*, 368 Ark. 256, 244 S.W.3d 683 (2006). In addressing a challenge to the sufficiency of the evidence, we review the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Law v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 9, 2009). We will affirm where the record reveals that substantial evidence sustains the verdict. *Id.* Substantial evidence is evidence of sufficient force and character that, without resorting to speculation and conjecture, compels a conclusion one way or the other. *Sales v. State*, 374 Ark. 222, ___ S.W.2d ___ (2008). On appeal, we do not weigh the evidence presented at trial, as that is a matter for the fact-finder, nor do we assess the credibility of the witnesses. *Woods v. State*, 363 Ark. 272, 213 S.W.3d 627 (2005).

Appellant states his issue on appeal in the following terms: “That the trial court erred in declining to direct a verdict in appellant’s favor because the State failed to introduce

substantial evidence that appellant did in fact cause serious physical injury.” He begins his argument by again stating that he is challenging the sufficiency of the evidence of the second-degree battery conviction with regard to the element of serious physical injury. However, he presents no argument whatsoever on that issue. Instead, his entire argument is devoted to the contention that the State failed to offer sufficient proof identifying him as the perpetrator of the battery. As a result, we conclude that appellant has abandoned his argument concerning the element of serious physical injury. *See, e.g., Estacuy v. State*, 94 Ark. App. 183, 228 S.W.3d 567 (2006) (holding that a conclusory statement in a point on appeal constitutes a waiver of issue not argued in the brief). In any event, we could decline to address the argument concerning serious physical injury because assignments of error, unsupported by convincing argument or pertinent authority, will not be considered on appeal unless it appears without further research that they are well taken. *Drake v. State*, 103 Ark. App. 87, ___ S.W.3d ___ (2008). Nevertheless, we note that the supreme court has found serious physical injury where the victim was struck three times with a fist, causing facial fractures and the impairment of vision for two weeks. *Lum v. State*, 281 Ark. 495, 665 S.W.2d 265 (1984). The evidence in this case shows that Jodi also suffered a protracted impairment of the function of a bodily member. As a result of the collision, she sustained a fracture to her wrist and wore a brace for three weeks. As of the time of trial, which took place fourteen months after the incident, she was still experiencing pain, popping, and

swelling in her wrist. Consequently, the jury's verdict is supported by substantial evidence.

We now turn to the argument that appellant made in his brief. He contends that there is no substantial evidence proving that he was, in fact, the driver of the truck that struck Shirey's vehicle. Proof identifying the accused as the person who committed the crime is essential to a conviction. *Crutchfield v. State*, 25 Ark. App. 227, 763 S.W.2d 294 (1988). However, we cannot say that proof of this element was insufficient. Shirey positively identified appellant as the driver of the truck that collided with her vehicle. Although appellant adduced testimony to cast doubt on Shirey's identification, the jury chose to believe Shirey and not the witnesses offered by appellant. In light of Shirey's testimony, we cannot say that the jury's verdict is not supported by substantial evidence. Accordingly, we affirm appellant's conviction.

PITTMAN and GLADWIN, JJ., agree.